

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 53
CLEAN WATER ASSISTANCE

324.5301 Definitions.

Sec. 5301. As used in this part:

(a) "Assistance" means 1 or more of the following activities to the extent authorized by the federal water pollution control act:

(i) Provision of loans to municipalities for construction of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects.

(ii) Project refinancing assistance.

(iii) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would improve credit market access or reduce interest rates.

(iv) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(v) Provision of loan guarantees for similar revolving funds established by municipalities.

(vi) The use of deposited funds to earn interest on fund accounts.

(vii) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, 33 USC 1381 to 1387.

(b) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

(c) "Capitalization grant" means the federal grant made to this state by the United States environmental protection agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1387.

(d) "Construction activities" means any actions undertaken in the planning, designing, or building of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects. Construction activities include, but are not limited to, all of the following:

(i) Project planning services.

(ii) Engineering services.

(iii) Legal services.

(iv) Financial services.

(v) Design of plans and specifications.

(vi) Acquisition of land or structural components, or both.

(vii) Building, erection, alteration, remodeling, or extension of a sewage treatment works.

(viii) Building, erection, alteration, remodeling, or extension of projects designed to control nonpoint source pollution, consistent with section 319 of title III of the federal water pollution control act, 33 USC 1329.

(ix) Building, erection, alteration, or remodeling of a stormwater treatment project.

(x) Municipal supervision of the project activities described in subparagraphs (i) to (ix).

(e) "Disadvantaged community" means a municipality in which all of the following conditions are met:

(i) Users within the area served by a proposed sewage treatment works project or stormwater treatment project are directly assessed for the costs of construction.

(ii) The median household income of the area served by a proposed sewage treatment works project or stormwater treatment project does not exceed 120% of the statewide median annual household income for Michigan.

(iii) The municipality demonstrates at least 1 of the following:

(A) More than 50% of the area served by a proposed sewage treatment works project or stormwater treatment project is identified as a poverty area by the United States bureau of census.

(B) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the most recently published federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project under this sub-subparagraph, the municipality shall utilize the most recently published statistics from the United States bureau of the census, updated to reflect current dollars, for the community which most closely approximates the area being served by the project.

(C) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the most recently published statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 1% of the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project.

(D) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is not greater than 120% of the statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 3% of the median annual household income of the area served by the proposed project.

(f) "Federal water pollution control act" means 33 USC 1251 to 1387.

(g) "Fund" means the state water pollution control revolving fund established under the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076, established pursuant to title VI of the federal water pollution control act.

(h) "Fundable range" means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the department to exist to provide assistance at the beginning of each annual funding cycle.

(i) "Municipality" means a city, village, county, township, authority, or other public body, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law; or an Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of title III of the federal water pollution control act, 33 USC 1329.

(j) "Nonpoint source project" means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan pursuant to section 319 of title III of the federal water pollution control act, 33 USC 1329.

(k) "Priority list" means the annual ranked listing of projects developed by the department in section 5303 or used by the department pursuant to section 5315.

(l) "Project" means a sewage treatment works project, a stormwater treatment project, or a nonpoint source project, or a combination of these.

(m) "Project refinancing assistance" means buying or refinancing the debt obligations of municipalities within the state if construction activities commenced after March 7, 1985 and the debt obligation was incurred after March 7, 1985.

(n) "Sewage treatment works project" means construction activities on any device or system for the treatment, storage, collection, conveyance, recycling, or reclamation of the sewage of a municipality, including combined sewer overflow correction and major rehabilitation of sewers.

(o) "Stormwater treatment project" means construction activities of a municipality on any device or system for the treatment, storage, recycling, or reclamation of storm water that is conveyed by a storm sewer that is separate from a sanitary sewer.

(p) "Tier I project" means a project for which assistance is sought or provided from funds made directly available from the federal capitalization grant or from the Great Lakes water quality bond fund pursuant to section 19708(1)(a).

(q) "Tier II project" means a project for which assistance is sought or provided from funds other than those made directly available from the federal capitalization grant or from the Great Lakes water quality bond fund pursuant to section 19708(1)(a).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 255, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5302 Construction of part; broad interpretation of powers; prohibited grants or loans; liability for costs; legislative intent.

Sec. 5302. (1) This part shall be construed liberally to effectuate the legislative intent. All powers granted

under this part shall be broadly interpreted to effectuate the intent and purposes of this part and shall not be interpreted as a limitation of powers.

(2) Except as may be authorized by the federal water pollution control act, the fund shall not provide grant assistance to a municipality or provide loans for the local share of projects constructed with grants provided under title II of the federal water pollution control act, chapter 758, 86 Stat. 833, 33 U.S.C. 1281, 1282 to 1293, and 1294 to 1299.

(3) This state is not liable to a municipality, or any other person performing services for the municipality, for costs incurred in developing or submitting an application for assistance under this part.

(4) It is the specific intent of the legislature to minimize paperwork for tier II projects.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5303 Cooperative regional or intermunicipal projects; project plan for tier I or tier II project; documentation; notice; public comment; development of priority list; submission of priority list to legislature; effective date of priority list; other actions not limited; "on-site septic system" defined.

Sec. 5303. (1) Municipalities shall consider and utilize, where possible, cooperative regional or intermunicipal projects in satisfying sewerage needs in the development of project plans.

(2) A municipality may submit a project plan for use by the department in developing a priority list.

(3) The project plan for a tier I project shall include documentation that demonstrates that the project is needed to assure maintenance of, or to progress toward, compliance with the federal water pollution control act or part 31, and to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347. The documentation shall demonstrate all of the following:

(a) The need for the project.

(b) That feasible alternatives to the project were evaluated taking into consideration volume reduction opportunities and the demographic, topographic, hydrologic, and institutional characteristics of the area.

(c) That the project is cost effective and implementable from a legal, institutional, financial, and management standpoint.

(d) Other information as required by the department.

(4) The project plan for a tier II project shall include documentation that demonstrates that the project is or was needed to assure maintenance of or progress towards compliance with the federal water pollution control act or part 31, and is consistent with all applicable state environmental laws. The documentation shall include all of the following information:

(a) Information to demonstrate the need for the project.

(b) A showing that the cost of the project is or was justified, taking into account available alternatives. Those costs determined by the department to be in excess of those costs justified are not eligible for assistance under this part.

(5) After notice and an opportunity for public comment, the department shall annually develop separate priority lists for sewage treatment works projects and stormwater treatment projects, for nonpoint source projects, and for projects funded under the strategic water quality initiatives fund created in section 5204. Projects not funded during the time that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the municipality submits an amendment to its plan that introduces new information to be used as the basis for prioritization. These priority lists shall be based upon project plans submitted by municipalities, and the following criteria:

(a) That a project complies with all applicable standards in part 31 and the federal water pollution control act.

(b) An application for a segment of a project that received funds under the title II construction grant program or title VI state revolving loan funds of the federal water pollution control act or the strategic water quality initiatives fund created in section 5204 shall be first priority on its respective priority list for funding for a period of not more than 3 years after funds were first committed under those programs.

(c) If the project is a sewage treatment works project or a stormwater treatment project, all of the following criteria:

(i) The severity of the water pollution problem to be addressed, maximizing progress towards restoring

beneficial uses and meeting water quality standards.

(ii) A determination of whether a project is or was necessary to comply with an order, permit, or other document with an enforceable schedule for addressing a municipality's sewage-related water pollution problems that was issued by the department or entered as part of an action brought by the state against the municipality or any component of the municipality. A municipality may voluntarily agree to an order, permit, or other document with an enforceable schedule as described in this subparagraph.

(iii) The population to be served by the project. However, the criterion provided in this subparagraph shall not be applied to projects funded by the strategic water quality initiatives fund created in section 5204.

(iv) The dilution ratio existing between the discharge volume and the receiving stream.

(v) If the project is within a disadvantaged community, a maximum of 50 points shall be awarded to the project in the manner that points are awarded in rules promulgated under this part.

(d) If the project is a sewage treatment works project, 100 priority points shall be awarded pursuant to R 323.958 of the Michigan administrative code for each of the following that apply to the project:

(i) The project addresses on-site septic systems that are adversely affecting the water quality of a water body or represent a threat to public health, provided that soil and hydrologic conditions are not suitable for the replacement of those on-site septic systems.

(ii) The project includes the construction of facilities for the acceptance or treatment of septage collected from on-site septic systems.

(e) Rankings for nonpoint source projects shall be consistent with the state nonpoint source management plan developed pursuant to section 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 USC 1329.

(f) Any other criteria established by the department by rule.

(6) The priority list shall be submitted annually to the chair of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of natural resources and the environment.

(7) For purposes of providing assistance, the priority list shall take effect on the first day of each fiscal year.

(8) This section does not limit other actions undertaken to enforce part 31, the federal water pollution control act, or any other act.

(9) As used in this section, "on-site septic system" means that term as defined in section 5201.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 221, Imd. Eff. Jan. 2, 2002;—Am. 2002, Act 398, Eff. Nov. 5, 2002;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 398 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5304 Assistance; requirements.

Sec. 5304. Subject to sections 5309 and 5310, assistance provided to municipalities to construct sewage treatment works projects, stormwater projects, and nonpoint source projects shall be in accordance with all of the following:

(a) Assistance for approved sewage treatment works projects and stormwater treatment projects shall be provided for projects in the fundable range of the priority list developed pursuant to 5303, and to other projects that may become fundable pursuant to section 5310.

(b) Assistance for approved qualified nonpoint source projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 5303. The director shall annually allocate at least 2% of the available funds to the extent needed to provide assistance to projects on the nonpoint source priority list. If these funds are not awarded, the allocation shall revert to provide assistance to projects on the sewage treatment works priority list.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond

authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election.”

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds “shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question.” In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5305 Descriptions and timetables for actions.

Sec. 5305. The department shall provide written descriptions and timetables for actions required under this part, including the intended use plan developed under section 5306, and may provide to municipalities that request assistance in writing other information that the department considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5306 Intended use plan; preparation and submission; purpose; public participation; changes in plan; contents of plan; notice of approval; notification of municipality; information to be provided; schedule.

Sec. 5306. (1) The department shall prepare and submit an intended use plan annually to identify proposed annual intended uses of the fund, and to facilitate the negotiation process that the department may conduct with the United States environmental protection agency for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act.

(2) The department shall provide for a public participation process that requires not less than 1 public hearing for the intended use plan. The department may make changes in the intended use plan without holding additional hearings in response to the comments received from the United States environmental protection agency and through the public participation process.

(3) The intended use plan shall include all of the following:

(a) A copy of the state's priority lists.

(b) A description of the long- and short-term goals of the fund.

(c) The proposed fundable range and an allocation of the funds available for projects on the nonpoint source priority list and for the sewage treatment works projects and stormwater treatment projects priority list.

(d) A description of the projects that are on the priority lists, including project categories and types, applicable discharge or enforceable requirements, proposed terms of the assistance, including a schedule of estimated disbursements of funds, and the names of the municipalities proposed to receive assistance.

(e) Any necessary assurances or proposals indicating how the state intends to meet applicable federal requirements.

(f) A description of the criteria and method for distribution of the fund.

(g) A description of the public participation process followed in the development of the intended use plan and the results of that process.

(h) Any other information needed to comply with the federal water pollution control act.

(i) Any other information considered appropriate by the department.

(4) Upon notice from the United States environmental protection agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall further provide copies of the sewage treatment works projects and stormwater treatment projects priority list, the nonpoint source project priority list, and the intended use plan to all persons requesting such information. Following notification, the department shall establish, with the concurrence of the municipality, a schedule for project plan approval, submittal of a complete application for assistance, and approval of plans and specifications.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5307 Project plans; review; approval or disapproval; extension of review period; notice of deficiencies; review of subsequent submittals.

Sec. 5307. (1) The department shall review, generally in priority order, the project plans for projects in the fundable range and either approve or disapprove the plans within 120 days of notifying the municipalities of

their inclusion in the intended use plan. Upon determination by the department that a project is complex and warrants additional review, the department shall notify the municipality and may extend the review period for not more than 60 days.

(2) If the project plan is disapproved, the department shall notify the municipality of any deficiencies that need to be corrected.

(3) The department shall review subsequent submittals and either approve or disapprove the amended project plan within 120 days of those submittals.

(4) If the project plan is not approved, the department shall notify the municipality of the deficiencies.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5308 Application for assistance; requirements; revenue source; acceptance; notice of additional information required; approval or disapproval of application.

Sec. 5308. (1) To apply for assistance from the fund, a municipality shall submit the following, if applicable as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with municipal bond obligations existing at the time assistance is requested, and pledged to both of the following purposes:

(i) If assistance is in the form of a loan, the timely repayment of the loan.

(ii) Adequate revenues from a user-based source to fund the operation and maintenance of the project.

(b) A project plan approved under section 5307.

(c) A certification by an authorized representative of a municipality affirming that the municipality has the legal, managerial, institutional, and financial capability to build, operate, and maintain the project.

(d) A letter of credit, insurance, or other credit enhancement to support the credit position of the municipality, as required by the department.

(e) A set of plans and specifications suitable for bidding.

(f) A certification from an authorized representative of the municipality that the applicant has, or will have prior to the start of construction, all applicable state and federal permits required for construction of the project.

(g) A certified resolution from the municipality designating an authorized representative for the project.

(h) A certification from an authorized representative of the municipality that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for its completion, or the municipality's ability to make timely loan repayments, if applicable.

(i) If applicable, all executed intermunicipal service agreements.

(j) An agreement that the municipality will operate the project in compliance with applicable state and federal laws.

(k) An agreement that the municipality will not sell, lease, abandon, or otherwise dispose of the project without an effective assignment of obligations and the prior written approval of the department and the authority.

(l) An agreement that all municipal project accounts will be maintained in accordance with generally accepted government accounting standards as defined and required under the federal water pollution control act.

(m) An agreement that the municipality will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the municipality will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(n) An agreement that all municipal contracts with contractors will provide that the contractor and any subcontractor may be subject to a financial audit and that contractors and subcontractors shall comply with generally accepted governmental accounting standards.

(o) An agreement that all pertinent records shall be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation, a claim, an appeal, or an audit is begun before the end of the 3-year period, records shall be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, "initiation of the operation" means the date certain set by the municipality and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) If the project is segmented as provided in section 5309, a schedule for completion of the project and adequate assurance that the project shall be completed with or without assistance from the fund or that the

segmented project shall be operational without completion of the entire project.

(q) An agreement that the project shall proceed in a timely fashion if the application for assistance is approved.

(r) An application fee, if required by the department.

(2) The requirement of subsection (1)(a) for a dedicated source of revenue may include a revenue source pledged to repay the debt to the fund from sources including, but not limited to, 1 or more of the following:

(a) Ad valorem taxes.

(b) Special assessments.

(c) User-based revenue collections.

(d) General funds of the municipality.

(e) Benefit charges.

(f) Tap-in fees, or other 1-time assessments.

(3) The department shall accept applications for assistance from municipalities in the fundable range of the priority list that have approved project plans and shall determine whether an application for assistance is administratively complete and notify the applicant within 30 calendar days of receipt of the application specifying any additional information necessary to complete the application.

(4) The department shall approve or disapprove an application within 30 calendar days of the determination that the application is complete.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5309 Segmenting sewage treatment work project.

Sec. 5309. To ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single sewage treatment work project or stormwater project, the department may segment a sewage treatment work project if either of the following criteria is present:

(a) The cost of the proposed project is more than 30% of the amount available in the fund.

(b) Upon application of a municipality, the department has approved a municipality's application for segmenting a project.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5310 Project subject to bypass; extension of schedule; effect of bypass.

Sec. 5310. A project in the fundable range of a priority list that fails to meet the schedule established by the department under section 5306, or does not have approved plans and specifications and an approvable application 90 days prior to the last day of the fiscal year, whichever comes first, is subject to bypass. A municipality may request an extension of the schedule for cause. A project bypassed pursuant to this section shall not be considered for an order of approval until all other projects in the fundable range have either been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle. After a project within the fundable range has been bypassed, the department may award assistance to projects outside the fundable range. Assistance shall be made available to projects outside the fundable range in priority order contingent upon the municipality's satisfaction of all applicable requirements for assistance pursuant to section 5308 within the time period established by the department, but not to exceed 60 days from the date of notification of bypass.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5311 Order of approval; certification of eligibility; method of establishing interest rate.

Sec. 5311. (1) The department shall review a complete application for assistance for a project in the fundable range. If the department approves the application for assistance, the department shall issue, subject to section 5310, an order of approval to establish the specific terms of the assistance. The order of approval shall include, but not be limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

(c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the

premium charged.

(2) The order of approval shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) After issuance of the order, the department shall certify to the authority that the municipality is eligible to receive assistance.

(4) Within each annual funding cycle, the method of establishing the interest rate applicable to a loan or project refinancing assistance shall be applied equally within tier I and tier II projects to all municipalities receiving such assistance.

(5) The method of establishing interest rates may provide for a different level of subsidy for tier I projects than for tier II projects.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5312 Termination of assistance; determination; causes; notice; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5312. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of assistance under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5313 Petition; orders; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5313. (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

(2) The department may issue an order to terminate the project for cause that is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order to the authority recommending appropriate action.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of the loan under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5314 Costs of administering and implementing part; payment.

Sec. 5314. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal water pollution control act.

(b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5315 Repealed. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: The repealed section pertained to duration of current priority list.

Popular name: Act 451

Popular name: NREPA

324.5316 Powers of department.

Sec. 5316. The department has the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions of this part, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of his or her powers.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, to enter into agreements with any person or the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(d) Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(e) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(f) Review and approve all necessary documents in a municipality's application for assistance and issue an order authorizing assistance to the authority.

(g) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(h) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(i) Make application requesting a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(j) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and to select projects to be funded.

(k) Prepare and submit an annual report required by the federal water pollution control act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5317 State water pollution control revolving fund advisory committee.

Sec. 5317. (1) The state water pollution control revolving fund advisory committee is created within the department of natural resources and environment.

(2) The committee shall consist of a representative of the department of natural resources and environment and additional members appointed by the director of the department of natural resources and environment

upon recommendation from at least the following organizations:

- (a) The American council of engineering companies.
- (b) The American waterworks association.
- (c) The Michigan chamber of commerce.
- (d) The Michigan association of counties.
- (e) The Michigan townships association.
- (f) The Michigan municipal league with regard to appointing members from the following:
 - (i) A rural municipality with a population of 10,000 or less that operates a sewage treatment works system.
 - (ii) A suburban municipality that operates a sewage treatment works system.
 - (iii) A city that operates a sewage treatment works system.
- (g) A statewide association representing drain commissioners.
- (h) The Michigan infrastructure and transportation association.
- (i) The Michigan water and environment association.
- (j) A statewide organization of regional planning authorities.
- (k) A statewide environmental or conservation organization.

(3) The members first appointed to the committee shall be appointed within 60 days after the effective date of the amendatory act that added this section.

(4) If a vacancy occurs on the committee, the director shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The director may remove a member of the committee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) The first meeting of the committee shall be called by the director of the department of natural resources and environment.

(7) A majority of the members of the committee constitute a quorum for the transaction of business at a meeting of the committee. A majority of the members present and serving are required for official action of the committee.

(8) The business that the committee may perform shall be conducted at a public meeting of the committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) A writing prepared, owned, used, in the possession of, or retained by the committee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) Members of the committee shall serve without compensation.

(11) Staff from the department of natural resources and environment shall assist with the administrative tasks of the committee, including meeting notices, minutes, and compilation of resource materials and reports.

(12) The committee shall evaluate this part and make recommendations on how this part could be amended to achieve the following outcomes:

- (a) Increasing the level of investment in sewage collection and treatment systems.
- (b) Providing incentives for actions that not only improve water quality but result in pollution prevention.
- (c) Optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems.

(13) The committee shall review and make recommendations on revisions to this part related to at least all of the following:

(a) Revising procedures to accommodate concurrent design and build type procurement and other nontraditional contracting procedures.

(b) Allowing project planning and preconstruction as costs eligible for assistance from the fund.

(c) Reducing and streamlining the cost-effectiveness review requirements to be more consistent with local planning needs.

(d) Updating the scoring system to take into account infrastructure asset management.

(e) Simplifying application procedures.

(f) Reviewing options to provide grants to municipalities for timely and appropriate project planning, including disincentives for failure to demonstrate progress.

(g) Establishing protocols for a premeeting process for the department of natural resources and environment to provide informal feedback to review the application and determine the likelihood of receiving funding.

(h) Recommending a new model for establishing interest rates on a sliding scale based on the percentage of income paid in utility fees.

(i) Reviewing options to allow municipalities to be able to roll project plan expenses into the loans.

(j) Alternative financing mechanisms for funding sewage treatment works projects, storm water projects, and nonpoint source projects.

(14) The committee shall review and make recommendations regarding the need for and design of a grant

program for the purpose of funding specific wastewater treatment facility infrastructure improvements projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities.

(15) Not later than August 1, 2011, the committee shall submit a report to the department of natural resources and environment and to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment, containing the committee's conclusions and recommendations.

(16) Effective 6 months after the committee submits its report under subsection (15), the committee is abolished.

(17) As used in this section, "committee" means the state water pollution control revolving fund advisory committee created in subsection (1).

History: Add. 2010, Act 231, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA